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| 10/589,386 | 06/07/2007 | James K. Garland | TEAR AWAY WALL | 7139 |
| 7590 10/24/2008 | | | | |
| Terry M. Crellin 204 W. 330 North Laverkin, UT 84745 | | | | |
| EXAMINER NELSON, MATTHEW M | | | | |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/589,386

Applicant(s)

GARLAND, JAMES K.

Examiner

Matthew M. Nelson

Art Unit

4166

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 June 2007.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-8 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 15 August 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-946)
3) ☐ Information Disclosure Statement(s) (PTO/CDC)
4) ☐ Interview Summary (PTO-413)
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____
Paper No(s)/Mail Date _____

DETAILED ACTION

Specification

1. The abstract of the disclosure does not commence on a separate sheet in accordance with 37 CFR 1.52(b)(4). A new abstract of the disclosure is required and must be presented on a separate sheet, apart from any other text.

Priority

2. It is noted that this application appears to claim subject matter disclosed in prior Application No. 60/546,406, filed February 20, 2004 and PCT/US05/03105, filed January 26, 2005. A reference to the prior application must be inserted as the first sentence(s) of the specification of this application or in an application data sheet (37 CFR 1.76), if applicant intends to rely on the filing date of the prior application under 35 U.S.C. 119(e), 120, 121, or 365(c). See 37 CFR 1.78(a). For benefit claims under 35 U.S.C. 120, 121, or 365(c), the reference must include the relationship (i.e., continuation, divisional, or continuation-in-part) of all nonprovisional applications. If the application is a utility or plant application filed under 35 U.S.C. 111(a) on or after November 29, 2000, the specific reference to the prior application must be submitted during the pendency of the application and within the later of four months from the actual filing date of the application or sixteen months from the filing date of the prior application. If the application is a utility or plant application which entered the national stage from an international application filed on or after November 29, 2000, after compliance with 35 U.S.C. 371, the specific reference must be submitted during the

pendency of the application and within the later of four months from the date on which the national stage commenced under 35 U.S.C. 371(b) or (f) or sixteen months from the filing date of the prior application. See 37 CFR 1.78(a)(2)(ii) and (a)(5)(ii). This time period is not extendable and a failure to submit the reference required by 35 U.S.C. 119(e) and/or 120, where applicable, within this time period is considered a waiver of any benefit of such prior application(s) under 35 U.S.C. 119(e), 120, 121 and 365(c). A benefit claim filed after the required time period may be accepted if it is accompanied by a grantable petition to accept an unintentionally delayed benefit claim under 35 U.S.C. 119(e), 120, 121 and 365(c). The petition must be accompanied by (1) the reference required by 35 U.S.C. 120 or 119(e) and 37 CFR 1.78(a)(2) or (a)(5) to the prior application (unless previously submitted), (2) a surcharge under 37 CFR 1.17(t), and (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2) or (a)(5) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional. The petition should be addressed to: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.

If the reference to the prior application was previously submitted within the time period set forth in 37 CFR 1.78(a), but not in the first sentence(s) of the specification or an application data sheet (ADS) as required by 37 CFR 1.78(a) (e.g., if the reference was submitted in an oath or declaration or the application transmittal letter), and the information concerning the benefit claim was recognized by the Office as shown by its inclusion on the first filing receipt, the petition under 37 CFR 1.78(a) and the surcharge

under 37 CFR 1.17(t) are not required. Applicant is still required to submit the reference in compliance with 37 CFR 1.78(a) by filing an amendment to the first sentence(s) of the specification or an ADS. See MPEP § 201.11.

Claim Objections

3. Claims 5-6 are objected to because of the following informalities: Claim 5 recites "a width of about 3/8 inch to 5/8 inch and a thickness of about 3/64 inch and 5/64 inch" which appears to mean "a width of about 3/8 inch to 5/8 inch and a thickness of about 3/64 inch to 5/64 inch". Claims 6-7 recites "distal end of said one leg" which appears to mean "distal end of said first leg to said base". Appropriate correction is required.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claim 4 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

6. The term "about" in claim 4 is a relative term which renders the claim indefinite. The term "about" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. The range disclosed by "at least about 4" is unclear. Examiner suggests removing "about" from this limitation.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

8. Claims 1-4 are rejected under 35 U.S.C. 102(e) as being anticipated by Honstein et al. (2004/0166466).

9. Honstein shows a dental model tray (31) made entirely of a polymeric material ([0086], [0118]) comprising a substantially planar base (flat upper surface 59), a side wall (upper peripheral edge wall 33), and a thin, membrane-like connector member (dashed line in Fig. 1) extending continuously around the base formed integrally between the base and side wall being frangible so that the side wall may be torn away from the base ([0012]). With respect to claims 3-4, membrane-like connector member includes at least about four spaced apart thin tabs (frangible members 65; Fig. 1).

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Honstein.
12. Honstein discloses the device as previously described above. Honstein also shows an ell-shaped member (at 74B in Fig. 2) comprising a first leg (at 75 in Fig. 2) and a second leg (at 85 in Fig. 2) in the shape of a flat strip disposed at an angle of 90 degrees relative to each other, a distal end of said first leg attached to said base in a plane parallel to the upper surface of said base (near 37 in Fig. 2), and an equivalent means for removably engaging the distal ends of second legs of respective ell-shaped members (cylindrical hinge pin 91A of hinge mechanism 32) so that they may pivot at the distal ends relative to each other (Fig. 2), but fails to show a width of about $\frac{3}{8}$ inch to $\frac{5}{8}$ inch and a thickness of about $\frac{3}{64}$ inch to $\frac{5}{64}$ inch. It would have been an obvious design choice to one having ordinary skill in the art at the time of invention to have selected the specified dimensions as it has not been disclosed that they serve any advantage or particular purpose, or solve a stated problem.
13. Claims 6-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Honstein in view of Huffman (2002/0102514).
14. Honstein discloses the device as previously described above, but fails to show means for removably attaching said distal end of said one leg to said base comprising a slide block formed at said distal end of said first leg, a back wall extending upwardly from said back side of said base, and an upwardly extending slot-like opening in said back wall that snugly receives the slide block in firm engagement.

15. Huffman teaches a slide block (articulator attachment tongue 74) formed at said distal end of said first leg (at 72 in Fig. 5), a back wall (articulator attachment bar 34) extending upwardly from said back side of said base, and an upwardly extending slot-like opening (articulator engagement slot 40) in said back wall that snugly receives the slide block in firm engagement ([0041]). Therefore, it would have been obvious to one having ordinary skill in the art at the time of invention to modify Honstein's device by including Huffman's means for removably attaching the first leg to the base in order to make use of disposable articulators.

16. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Honstein in view of Huffman as applied to claim 7 above, and further in view of McPherson (223,157).

17. Honstein/Huffman discloses the device as previously described above, but fails to show a stabilizer wall extending from the common juncture of first and second legs to a position that is spaced from the intersection of said block and said first leg.

18. McPherson teaches a stabilizer wall (fixed sharpened projections c) extending from the common juncture of first and second legs (at f in Fig. 1) to a position that is spaced from the intersection of said block and said first leg (at c in Fig. 1). Therefore, it would have been obvious to one having ordinary skill in the art at the time of invention to modify Honstein/Huffman's device to include the stabilizer of McPherson in order to secure the models without interfering with the fitting of the teeth thereto.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew M. Nelson whose telephone number is (571) 270-5898. The examiner can normally be reached on Monday-Friday 7:30am-5:00pm EDT.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriguez can be reached on (571) 272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/MMN/

/Cris L. Rodriguez/
Supervisory Patent Examiner, Art Unit 3732